

HR Weekly Podcast December 3, 2014

Today is December 3, 2014, and welcome to the HR Weekly Podcast from the State Human Resources Division. This week's podcast deals with a recent case decided by the United States Fourth Circuit Court of Appeals in which a former employee charged an employer with discrimination and retaliation.

In 2005, Heather Rome accepted a position with her employer, Development Alternatives, Inc., or DAI, in its office in Venezuela. In early January 2008, Rome met with an upper level manager in the United States to express complaints regarding her supervisor in Venezuela, Eduardo Fernandez. Following an investigation by the company, DAI implemented teambuilding exercises and provided a mentor to work with the staff in the Venezuela office. In spite of these efforts made by management to improve the situation, the working relationship between Rome and Fernandez did not improve.

In March 2008, at the conclusion of the mentoring program in the Venezuela office, Rome took approved personal leave. When she returned to work, she informed DAI that she needed to have surgery. Rome extended her leave several times, providing return dates of May 7th, early June, and then June 25th. On August 25th, Rome informed DAI that she still remained unable to work.

On June 12th, an upper level manager spoke to Rome and informed her that, although he needed to fill her position in Venezuela, he would ensure that she was able to obtain any job in which she was interested within DAI once she was able to return to work. She did not oppose this plan and, later in a deposition, indicated that it had been her intention to return to work at DAI. Rome did not, however, notify DAI at any time that she could return to work, failed to return messages, and did not inquire about future openings. DAI held her position until January 2009, when her employment was ended based on abandonment of position.

Rome filed a charge of discrimination against DAI. She also claimed that the company retaliated against her by involuntarily transferring her and constructively discharging her due to her complaint to management regarding her supervisor, Fernandez. Constructive discharge occurs when an employer makes the working conditions so intolerable that any "reasonable" person would feel compelled to quit. DAI requested summary judgment, which was granted by the federal district court which found that Rome failed to establish that she suffered adverse action as a result of her protected activity or demonstrate any causal connection between the protected activity and the alleged adverse actions.

Rome appealed the district court's decision to the Fourth Circuit. The appellate court concluded that the district court properly found that Rome failed to establish a prima

facie case of retaliation by DAI. Specifically, Rome failed to show that 1) she was constructively discharged or 2) that there was a causal connection between the complaint she made about her supervisor and DAI's decision to transfer and terminate her. The appellate court also found that Rome failed to establish that the reasons for the adverse actions taken by DAI were pretextual. In other words, Rome was unable to show that her protected activity was **the** reason for the adverse actions taken by DAI.

The outcome of this case demonstrates that proper steps taken by an employer in light of an employee complaint are a strong defense against claims of discrimination and retaliation. DAI took the following positive steps which serve as an example of good HR practices:

- Had an open door complaint policy,
- Promptly investigated the employee complaint and took quick action to address it,
- Gave the employee the opportunity to take advantage of her benefits as needed, and
- Remained in contact with the employee during the leave of absence and performed due diligence in providing every opportunity for the employee to return to work prior to termination

This case demonstrates that the Fourth Circuit has begun to analyze cases involving retaliation in light of the United States Supreme Court's ruling in a 2013 case in which the Court held that "an employee is required to show that his protected complaint was **the** reason, not just **a** reason, for the alleged retaliatory action." The information in this podcast was based on an article in the November 2014 issue of the [South Carolina Employment Law Letter](#). Thank you.